THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21203 OF 2006

Dated: 16th October, 2006.

Between:

E. Appalaraju .. Petitioner

And

Prohibition & Excise Superintendent,
Gajuvaka, Visakhapatnam district. .. Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21203 OF 2006

ORDER :

This writ petition is filed seeking a declaration that the order dated 29-9-2006 passed by the respondent – Prohibition & Excise Superintendent, Gajuvaka, Visakahapatnam District as arbitrary and illegal.

The petitioner was granted a licence in Form-A4 under the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 for a period of 2 years commencing from 1-7-2006. Pursuant thereto, the petitioner has been carrying the business under the name and style of M/s. Sri Kanya Wines. The impugned order shows that the petitioner was involved in Cr.No.95 of 2006-07 dated 28-7-2006 on the file of Gooty P.S. wherein he was shown as accused No.9 on the allegation that 14,160 nips of non-duty paid Indian and Foreign Liquor was being smuggled through tanker bearing No. KA 19-A-4789 from Hubli of Karnataka State into the State of Andhra Pradesh. The licensing authority, on preliminary verification, having found that the petitioner had committed an offence of Inter-State smuggling on Non-duty paid Indian made and Foreign Liquor suspended the license of the petitioner pending enquiry under Section 31 (1) (b) of the A.P. Excise Act, 1968 and issued a show-cause notice dated 19-9-2006 calling upon the petitioner to explain as to why the licence should not be cancelled. In response, the petitioner submitted his explanation dated 26-9-2006. Having considered the same, the respondent

who is the licensing authority while observing that the explanation is not satisfactory, cancelled the licence of the petitioner's shop. The said order dated 29-9-2006 is under challenge in this writ petition.

The petitioner does not dispute the fact that Cr.No.95/2006 was registered against him on 28-7-2006 and the same is pending investigation and that the petitioner has been enlarged on bail. However, the only contention raised by the petitioner is that since no offence or irregularity was committed in the sale of liquor at the licensed premises of the petitioner, the mere involvement in a criminal case cannot be a ground to cancel the licence of the petitioner. It is contended that the fact that the petitioner was arrayed as one of the accused in Cr.No.95/2006 would not amount to violation of any of the conditions of licence. In support of his contentions, the learned Counsel for the petitioner placed reliance upon a decision of this Court in V.P.THIMMAIAH vs. COMMISSIONER OF PROHIBITION & EXCISE, GOVT. OF A.P.[1].

As noted above, the allegation against the petitioner is that the petitioner along with Nowkarnama-holder was involved in a criminal case relating to smuggling and sale of non-duty paid liquor. The respondent before passing the impugned order of cancellation issued a show-cause notice and considered the explanation offered by the petitioner.

Since the impugned order cannot be held to be either without jurisdiction or in violation of the principles of natural justice, without exhausting the alternative remedy of appeal available under Section 63 of the A.P. Excise Act, the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. All the contentions raised by the petitioner are on merits which require to be considered by the Appellate Authority.

Accordingly, without expressing any opinion on merits and granting leave and liberty to the petitioner to work out the remedy of statutory appeal, the Writ Petition is dismissed. No costs. If any such

appeal is preferred within one week from today, the same shall be entertained and decided on merits in accordance with law.

G. ROHINI, J.

Dt. 16-10-2006
gbs
Note:- CC by 18-10-2006

[1] 2001 (6) ALD 201